



August 31, 2005

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Chief Tax Counsel  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510-6200

Mr. Patrick G. Heck  
Minority Chief Tax Counsel  
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United States Senate  
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***Re: Comments on the Tax Technical Corrections Act of 2005***

Gentlemen:

Attached are the comments of the American Council of Life Insurers regarding a technical correction that we feel is required to section 888(a) of the American Jobs Creation Act of 2005 (P.L. 108-357). The ACLI is the principal trade association of life insurance companies, representing 356 members that account for, in the aggregate, 80 percent of the assets of legal reserve life insurance companies in the United States.

In the course of conservatively investing company assets for the benefit of their insurance customers, our companies will often engage in hedging transactions to manage interest rate and other risks. Therefore, they are keenly interested in seeing that the changes to Internal Revenue Code section 1092 contained in section 888(a) of the Jobs Act work correctly and clearly reflect Congressional intent. Our comments below explain the issue and our proposed solution.

We appreciate the opportunity to provide our comments and would welcome the opportunity to work with Congressional staff on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory F. Jenner', is positioned below the word 'Sincerely,'.

Gregory F. Jenner

**PROPOSED TECHNICAL CORRECTION TO SECTION 888(a) OF THE  
AMERICAN JOBS CREATION ACT**

**Issue** – Section 888(a) of the Jobs Act amended Internal Revenue Code Section 1092(a)(2), which sets forth the tax treatment of identified straddles. Before the Jobs Act amendment, the identified straddle rule provided an exception from the general loss deferral regime applicable to straddles. The new rules now require that if a loss is realized on an identified straddle position, the basis of the remaining offsetting position(s) of the identified straddle shall be increased by the realized loss. The new rules are effective for positions established on or after October 22, 2004.

**Importance** – Life insurance companies often use hedging techniques to manage interest rate and other risks. Because of this, life insurers may have transactions that could be subject to the general straddle rules (i.e., loss deferral) absent the ability to use narrowly crafted relief provisions such as identified straddles.

**Need for Correction** – Initially the Jobs Act amendment was viewed as a welcome simplification of the identified straddle rules. The straddle rules are intended to provide a clear reflection of income by deferring loss until gain in offsetting positions is recognized. However, recent comments by Treasury and IRS officials have indicated that the new statutory language could be interpreted to result in a permanent loss denial or a loss deferral in amounts exceeding the losses that would be deferred under the general straddle rules, a result that is contrary to the clear reflection of income principle.

As enacted, the amendments to section 1092(a)(2) appear to assume that, if one position of the identified straddle is disposed of at a loss, there will be gain in the offsetting position. The new rules do not provide what the result will be where there is no gain in the offsetting position. The absence of a specific rule has prompted Treasury and IRS officials to suggest that this may result in a permanent denial of the loss, a result we believe would be entirely inappropriate from a tax policy perspective.

Moreover, where there is insufficient unrecognized gain in the remaining position(s) to offset the entire loss, the new rules appear to result in a deferral of the entire loss, whereas the general straddle rules would permit immediate deduction of the excess loss. Nothing in the legislative history of the provision suggests that Congress intended to enact a more onerous rule than prior law.

Finally, it has been suggested by certain Treasury and IRS officials that regulatory guidance may be required before taxpayers can take advantage of these new rules. While the statute, by its terms, is clearly self-executing, we believe it is essential that this be clarified by Congress in order to prevent frustration of Congressional intent.

***Specific Changes*** –

1. Section 1092 should be amended to specify the treatment of any realized loss on a position in an identified straddle where such loss exceeds the unrecognized gain in the offsetting position(s). One possible approach is to allow the excess loss to be deductible currently. This would be a simple extension of the general straddle rules that defer losses on straddles only to the extent of the unrealized gains in the offsetting positions.
2. If Congress concludes that no loss should be allowed until the offsetting position is disposed of, a rule is still needed under section 1092 to cover situations in which there is no gain in the offsetting position. In those instances, the loss should not be permanently denied. Instead, the loss should be allocated to the basis of the offsetting position so that the loss would be recovered

upon disposition of the offsetting position. This could be done in several tax neutral ways, including allocating based on fair market value or basis. We would be happy to work with Congressional staff with respect to this issue.

3. The provision relating to Treasury guidance should be amended to provide that, until such time as there is any such guidance, any reasonable identification method is sufficient. Alternatively, legislative history with respect to the technical corrections bill could provide a similar clarification for taxpayers and regulators.